



June 30, 2016

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington DC 20554

Re: Notice of *Ex Parte* Communication, MB Docket Nos. 14-50, 09-182, 13-236

Dear Ms. Dortch:

On June 29, Rick Kaplan, Erin Dozier and Scott Goodwin of the National Association of Broadcasters (NAB) met with Marc Paul of the Office of Commissioner Rosenworcel to discuss the long pending 2010 and 2014 quadrennial reviews of the broadcast ownership rules and the Commission's examination of the UHF discount.

During the meeting, we discussed the need to eliminate the print newspaper rule,<sup>1</sup> which today serves only to deter waning sources of investment for the struggling print newspaper industry. We contrasted media options available today versus those when the ban was adopted in 1975 (see attached presentation). We also discussed the Commission's determination more than a decade ago that the print newspaper rule no longer serves the public interest, the Third Circuit Court of Appeals' agreement with the Commission that, "record evidence suggests that cable and the Internet supplement the viewpoint diversity provided by broadcast and newspaper outlets in local markets,"<sup>2</sup> and the Third Circuit's more recent decision highlighting the Commission's continuing failure to update the rule which has "come at significant expense to parties that would be able, under some of the less restrictive options being considered by the Commission, to engage in profitable combinations."<sup>3</sup> The very limited modifications to the print newspaper rule contained in the order currently circulating for a vote<sup>4</sup> do not approach the sort of change reflective of the actual marketplace in which

---

<sup>1</sup> 47 C.F.R. § 73.3555(d).

<sup>2</sup> *Prometheus Radio Project v. FCC*, 373 F.3d 372, 400 (3d Cir. 2004).

<sup>3</sup> See *Prometheus Radio Project v. FCC*, Nos. 15-3863, 15-3864, 15-3865 & 15-3866, at 38 (3d Cir. May 25, 2016) (*Prometheus III*).

<sup>4</sup> FCC, *Fact Sheet: Updating Media Ownership Rules in the Public Interest* (rel. Jun. 27, 2016).

1771 N Street NW  
Washington DC 20036 2800  
Phone 202 429 5300

stations and papers compete—the one that today’s citizens use to gather, share, create, curate, critique and otherwise interact with news and information of their choosing. We urged the FCC to follow the court’s direction that the print newspaper rule is outdated and, as NAB has long argued, to eliminate it, given that the ban’s purported rationale has evaporated in the Internet age.<sup>5</sup>

NAB also emphasized the importance of significantly reforming the local TV ownership rule. The FCC has provided no competitive analysis based on empirical evidence that supports retention of the current rule. Among other problems, both elements of the rule (the “eight-voices” test and the “top-four restriction”) are based on the erroneous proposition that broadcast TV stations are the only relevant competitors in local markets and that competition from all other outlets can rationally be ignored.<sup>6</sup>

Finally, NAB highlighted its comments in the pending proceeding on the UHF discount and reiterated its position that eliminating the discount – which exists only as a calculation methodology for the national TV ownership cap – without considering the cap itself would be arbitrary and capricious.<sup>7</sup> Taking such action also would be contrary to the Third Circuit’s recent *Prometheus III* decision, where the court reversed the FCC for attributing TV joint sales agreements – and thereby making the ownership rules more stringent – without first determining whether the existing ownership rules were still sound and served the public interest.<sup>8</sup> Similarly, the Commission cannot, consistent with the Communications Act, eliminate the UHF discount, and thus alter the national TV ownership rule, without determining whether that rule still serves the public interest and, if so, at what level.

NAB also distributed the attached slide presentation and referenced data from a Pew Research Center study on usage of local news outlets.<sup>9</sup>

---

<sup>5</sup> See, e.g., Comments of NAB, MB Docket Nos. 14-50, *et al.*, at 9-31; 70-84 (Aug. 6, 2014) (NAB 2014 Comments).

<sup>6</sup> Cable viewing shares have long surpassed broadcast TV stations’ viewing shares and that online video options are now very significant competitors for both viewers and advertisers in local markets. NAB Written *Ex Parte* Communication, MB Docket Nos. 14-50, 09-182, at 5-10 (June 6, 2016). See also NAB 2014 Comments at 33-50. Additionally, as NAB previously explained in detail, the Commission has consistently failed to demonstrate in any way that eight independently owned and operated full power TV stations are necessary to preserve competition in local markets. See NAB 2014 Comments at 55-59; Reply Comments of NAB, MB Docket No. 09-182, at 14-15 (Apr. 17, 2012); Comments of NAB, MB Docket No. 09-182, at 27-29 (Mar. 5, 2012).

<sup>7</sup> See Comments of NAB, MB Docket No. 13-236 (Dec. 16, 2013). Consistent with our previous comments, NAB continues to take no position as to whether the national cap should be retained at its current level, modified or eliminated.

<sup>8</sup> *Prometheus III*, at 52.

<sup>9</sup> Pew Research Center: Journalism & Media Staff, *Local News in a Digital Age* (March 15, 2015), available at: <http://www.journalism.org/2015/03/05/local-news-in-a-digital-age/>.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Rick Kaplan', with a long horizontal line extending to the right.

---

Rick Kaplan  
General Counsel and Executive Vice President  
Legal and Regulatory Affairs

cc: Marc Paul

Attachment



# Modernizing the FCC's Broadcast Ownership Rules

*Creating Rules for This Century*

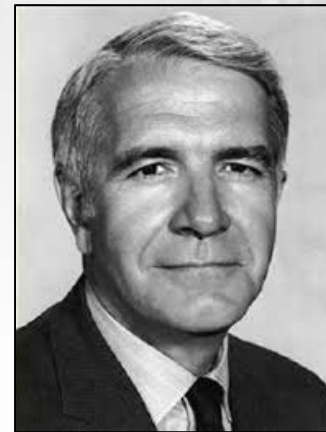
# 1975 Television



John Chancellor



Walter Cronkite



Harry Reasoner



# 1975 Radio



Love Will Keep Us Together



Rhinestone Cowboy



Philadelphia Freedom



# News in 1975



# The Washington Post



# News in 2016

**NAB**  
NATIONAL ASSOCIATION OF BROADCASTERS

EAST CITY ART



Comcast

HUFFPOST DC  
HillRag.com

**CURBED**  
WASHINGTON DC

Cleveland Park  
**WUSA 9**

WETA

FAMOUSDC

WAMU 88.5  
AMERICAN UNIVERSITY RADIO

**DC Watch**  
An on-line magazine for public affairs



BadWolf DC

Google

**CONGRESS HEIGHTS**  
ON THE RISE  
EST. 2008

**wtop**

abc **WJLA**  
WASHINGTON, D.C.

**NBC 4**  
WASHINGTON, D.C.



**Greater Greater Washington**  
The Washington, DC area is great. But it could be greater.

**HILL NOW**

**The Washington Times**

**Frozen Tropics**

A look at what's going on in Trinidad, on H Street, and in the larger area north of Capitol Hill.

**FOX 5**  
WTTG-DC

**105.9 FM**  
**WMAL**  
AM 630

dcist

dish  
NETWORK



**The Washington Post**

EAT || SHOP || LIVE || ANACOSTIA



**SiriusXM**  
SATELLITE RADIO

WASHINGTON DC  
**EATER**

**DIRECTV**

**fios**  
by verizon

**CAPITOL HILL CORNER**





# Third Circuit (2004)

“We agree record evidence suggests that cable and the Internet supplement the viewpoint diversity provided by broadcast and newspaper outlets in local markets.”

- *Prometheus Radio Project v. FCC*  
June 24, 2004

# Third Circuit (2016)

“[T]he 1975 [cross-ownership] ban remains in effect to this day even though the FCC determined more than a decade ago that it is no longer in the public interest. This has come at significant expense to parties that would be able, under some of the less restrictive options being considered by the Commission, to engage in profitable combinations.”

- *Prometheus Radio Project v. FCC*  
May 25, 2016

# Broadband Impact

The internet is “the most dynamic platform for free speech ever invented. It is our modern town square. It is our printing press.”

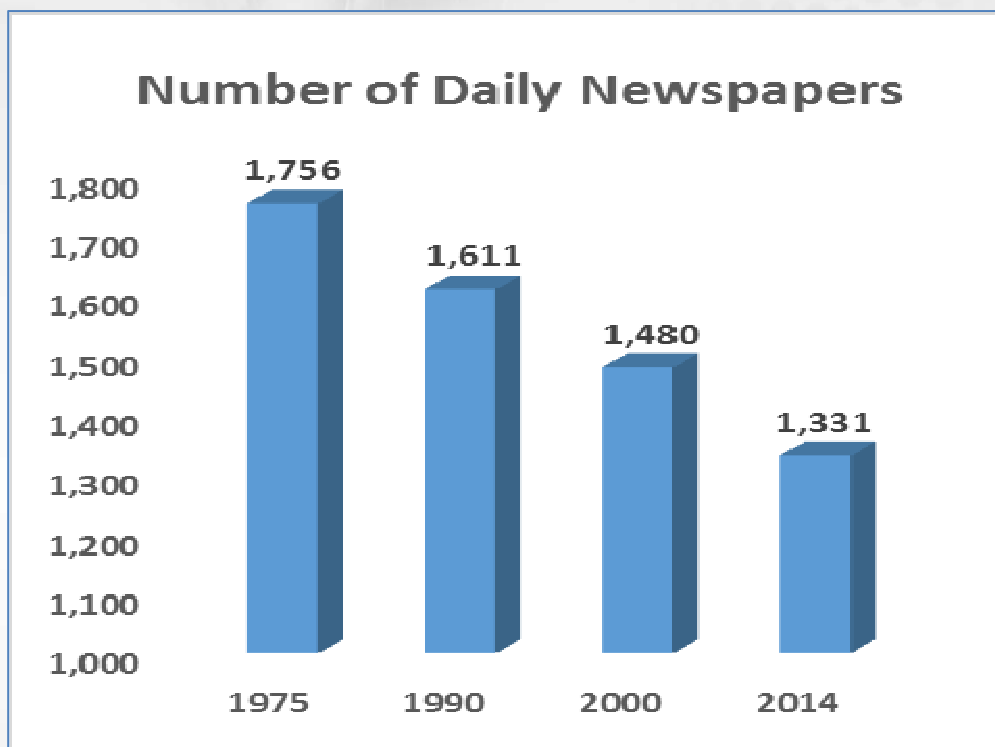
- FCC Commissioner Jessica Rosenworcel  
May 15, 2014

# Print Newspapers

“Though the industry has been struggling for some time, 2015 was perhaps the worst year for newspapers since the Great Recession and its immediate aftermath. Daily circulation fell by 7% since 2010, while advertising revenue at publicly traded newspaper companies fell by 8%, the most since 2009. At the same time, newsroom staffing fell by 10% in 2014, the last year for which data were available. Coming amid a wave of consolidation, this accelerating decline suggests the industry may be past its point of no return.”

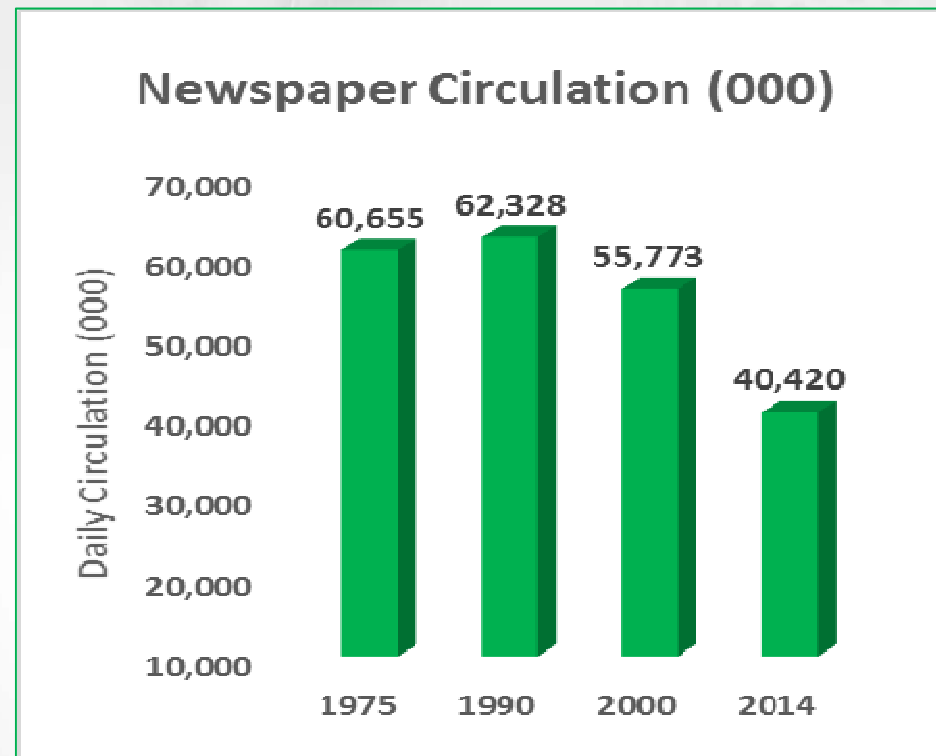
- “5 Key Takeaways about the State of the News Media in 2016”  
Pew Research Center  
June 15, 2016

# Print Newspapers



Source: Editor and Publisher International Yearbook

# Print Newspapers

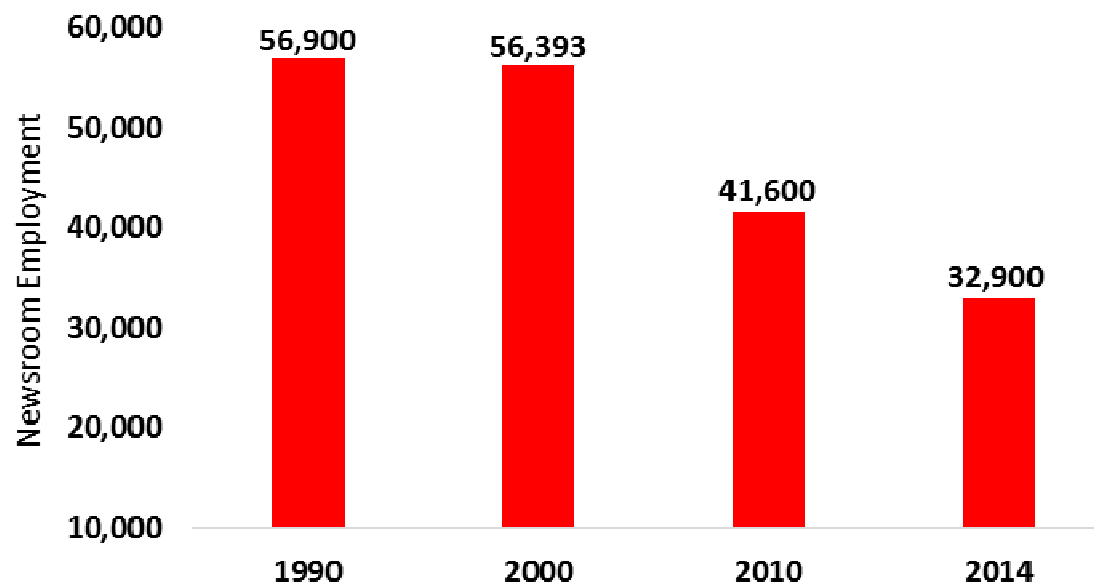


Source: Editor and Publisher International Yearbook



# Print Newspapers

## Newspaper Newsroom Employment



Source: ASNE

# Local TV Ownership

- 8 Voices
  - If voices, then far more than 8
  - If stations, more than 50% of markets don't even have 8 voices; no evidence of harm
- Top Four restriction
  - More restrictive than any other industry
    - e.g., wireless "screen" is 1/3 of holdings

# “Voices” in a Market

## Pew: Denver has 143 local “voices”

- Despite loss of Rocky Mountain News in 2009, information economy in Denver is robust
- Surfeit of digital-only news outlets
- User-generated content “has increased the diversity of editorial voices in the city’s media ecology”
- Multiple outlets – online and print – that serve local ethnic communities, including nine for Hispanic audiences alone

### Denver News Providers

*Metro-area sources of news that provide at least monthly coverage*

Source	# of outlets
<b>Dedicated Journalistic/News Entities</b>	
Daily newspapers	1
Local TV stations	7
Digital-only news outlets	25
Community papers	28
Specialty/ethnic news outlets	35
Local news/talk radio	4
University news outlets	3
Multiplatform	2
<b>Additional News Providers</b>	
Gov’t & municipal agencies	27
Neighborhood groups	11

Source: Pew Research Center analysis

PEW RESEARCH CENTER

# Conclusion

- Cross-ownership must be eliminated
  - Third Circuit indicated the time has come
  - Vastly different news and information landscape
  - Rules have affirmatively harmed newspaper and broadcasting industries
  - Zero quantifiable benefits of rule
- Local TV ownership rules must be updated
  - Broadcasters can't compete with consolidated industries
  - News and information helped by more flexible rules